

THE HONORABLE LAUREN KING

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

NINTENDO OF AMERICA INC., a
Washington Corporation,

Plaintiff,

V.

JAMES C. WILLIAMS a/k/a ARCHBOX, an individual,

Defendant.

CASE NO. 2:24-CV-00960-LK

**PLAINTIFF NINTENDO OF AMERICA
INC.'S *EX PARTE* MOTION FOR
LEAVE TO TAKE LIMITED EARLY
DISCOVERY**

Note on Motion Calendar:
November 22, 2024

18 Plaintiff Nintendo of America Inc. (“Nintendo”) respectfully requests leave to conduct
19 limited third-party discovery to (1) aid in preparation of its anticipated motion for default
20 judgment against Defendant James C. Williams a/k/a Archbox (“Defendant”) and (2) ensure that
21 all appropriate defendants have been named in this lawsuit. Nintendo filed this lawsuit against
22 Defendant on June 28, 2024, asserting claims for copyright infringement, 17 U.S.C. § 501 *et seq.*,
23 and violation of the U.S. Copyright Act’s anti-circumvention provisions, 17 U.S.C. § 1201.
24 Nintendo thereafter began diligent attempts to effect service upon Defendant, who (despite
25 apparent attempts at evasion) was finally served on August 13, 2024. Defendant has failed to
26 answer or respond to the Complaint in any manner, depriving Nintendo of the opportunity to take
27 discovery from the Defendant and requiring Nintendo to prepare a motion for default judgment.

28 | EX PARTE MOTION FOR LEAVE TO TAKE
LIMITED EARLY DISCOVERY
(Case No.2:24-CV-00960-LK)

1 Nintendo seeks leave to serve narrowly targeted subpoenas on a limited number of third-party
 2 Internet service providers who are likely to have information relevant both to Nintendo's
 3 anticipated motion for default judgment and to determining whether additional defendants should
 4 be named in this action and, if so, the identity of such additional defendants.

5 **I. FACTUAL BACKGROUND**

6 **A. Nintendo and the Nintendo Switch**

7 Nintendo develops and distributes the Nintendo Switch console, which is one of the most
 8 popular video game consoles of all time. Dkt. No. 1, ¶ 1. Nintendo also owns the U.S. copyrights
 9 and/or publishes in the United States (i.e., markets and distributes pursuant to exclusive license)
 10 award-winning video games that can be played only on the Nintendo Switch console. Many of
 11 these games – including titles such as *Mario Kart 8 Deluxe*, *The Legend of Zelda: Tears of the*
 12 *Kingdom*, *Super Mario Odyssey*, and *Animal Crossing: New Horizons* – belong to franchises that
 13 are household names and have each sold millions of copies. *Id.*

14 **B. Defendant and the Pirate Shops**

15 As alleged in the Complaint, the Defendant in this lawsuit has created, operates, oversees,
 16 promotes and assists others in creating, operating, and promoting a network of unauthorized online
 17 “shops” (nicknamed “freeshops”) which offer to the public for download extensive libraries of
 18 pirated video games for the Nintendo Switch console. Defendant’s unauthorized shops, which go
 19 by names such as “Jack-in-the-Shop,” “Turtle in the Shop,” and “LiberaShop” (collectively, the
 20 “Pirate Shops”) have been among the most insidious drivers of video game piracy over the past
 21 few years. Dkt. No. 1, ¶ 3. Through his role in the Pirate Shops, including his active promotion
 22 and facilitation of their use, Defendant has provided to members of the public a nearly limitless
 23 supply of video games, in particular Nintendo Switch games, free for the taking. *Id.* To sustain the
 24 Pirate Shops Defendant has engaged in “crowdsourcing” schemes such as a scheme by which
 25 members of the public are solicited to “donate” pre-paid Nintendo eShop Gift Cards (used to
 26 purchase games to then copy and distribute) or copies of pirated Nintendo game files. *Id.*

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28 **EX PARTE MOTION FOR LEAVE TO TAKE
 LIMITED EARLY DISCOVERY
 (Case No.2:24-CV-00960-LK)**

1 Defendant's activities also include knowingly trafficking in malicious and unlawful
 2 software products that are designed to, and have no purpose other than to, circumvent Nintendo's
 3 technological measures that protect against the unauthorized access to and use of Nintendo Switch
 4 games and the Nintendo Switch console (the "Circumvention Software"). Dkt. No. 1, ¶ 4.
 5 Defendant has hosted websites and online "communities" dedicated to offering the Circumvention
 6 Software and to providing assistance to others seeking to use such software. *Id.* Defendant also has
 7 been an active and highly prominent member of the Reddit community r/SwitchPirates – self-
 8 described as a "community by pirates, for pirates." Via the "SwitchPirates" Reddit board,
 9 Defendant has touted and advertised his Pirate Shops and offered technical advice and
 10 encouragement about how to obtain and play pirated Nintendo Switch games and use the
 11 Circumvention Software. *Id.*

12 Defendant's scheme has caused Nintendo an indeterminate, but certainly substantial,
 13 amount of harm by distributing an unknown quantity of Nintendo games for free, offering and
 14 distributing the Circumvention Software to an unknown number of individuals, and creating and
 15 operating (and assisting in the creation and operation of) the Pirate Shops. Nintendo also has
 16 reason to believe that certain unnamed individuals, using anonymous usernames, have been
 17 working in concert with Defendant to unlawfully exploit Nintendo's valuable intellectual property
 18 and unlawfully circumvent its technological measures. Declaration of Marc Mayer ("Mayer
 19 Decl."), ¶¶ 1-5. Nintendo was unable to determine the true names and capacities of these
 20 individuals or entities prior to filing this lawsuit, but anticipated that such information would be
 21 disclosed by Defendant in the course of discovery. *Id.*, ¶ 5.

22 C. **Plaintiffs' Investigations to Date**

23 Nintendo conducted an extensive and diligent investigation before filing the Complaint.
 24 Mayer Decl., ¶¶ 3-5. That investigation identified Defendant as central to the operation and
 25 promotion of the Pirate Shops and involved extensive efforts to determine his name and location.
 26 *Id.*, ¶¶ 3-4; *see also* Dkt. Nos. 15-17. Defendants also learned of other anonymous online actors
 27 believed to be involved in the operation of the Pirate Shops, but who have remained anonymous

1 despite continued investigation. Mayer Decl., ¶¶ 5-8. Nintendo has determined that subpoenas to
 2 the entities named below are likely to yield information needed to determine (1) the parameters of
 3 the default judgment to be requested against Defendant, including as to damages (i.e., Nintendo's
 4 actual damages, Defendant's profits, and/or the amount of statutory damages) and the scope of
 5 injunctive relief, and (2) whether unnamed participants in Defendant's scheme should be added in
 6 an amended complaint. *See id.*, ¶¶ 9-18.

7 **D. The Requested Discovery**

8 Nintendo requests leave from this Court to issue narrowly focused subpoenas relevant to
 9 the aforementioned topics to the following Internet service providers: (1) Namecheap, Inc.; (2)
 10 Tucows, Inc.; (3) GoDaddy, LLC; (4) Cloudflare, Inc.; (5) GitHub, Inc.; (6) Discord, Inc.; (7)
 11 Google LLC; and (8) Reddit, Inc. These subpoenas will be limited in scope and seek information
 12 (1) confirming and identifying the account holders and the sources of any payments made, and (2)
 13 where applicable, aggregate traffic and access statistics for the Pirate Shops' websites and related
 14 online locations.

15 1. **Namecheap, Inc.** is a domain name registrar. Defendant, and/or those working in
 16 concert with Defendant, used Namecheap to register multiple websites supporting the operation of
 17 the Pirate Shops. However, they did so using tools or services provided by Namecheap to conceal
 18 identifying information and maintain "privacy." Mayer Decl., ¶ 10. Namecheap is believed to have
 19 actual information concerning the owner(s) of these domain names, be it Defendant Williams or
 20 associated individuals appropriate to name in an amended complaint.

21 2. **Tucows, Inc.** is another domain name registrar. Defendant, and/or those working in
 22 concert with Defendant, used Tucows to register at least one other website supporting the
 23 operation of the Pirate Shops, again using "privacy" services to conceal identifying information.
 24 Mayer Decl., ¶ 11. Tucows is believed to have actual information concerning the owner of these
 25 domain names, be it Defendant Williams or an associated individual appropriate to name in an
 26 amended complaint.

1 3. **GoDaddy, LLC** is a third domain name registrar. It is believed that an individual
 2 working in concert with Defendant used GoDaddy to register a website linked to his GitHub
 3 account, again using “privacy protection” services to conceal identifying information. Mayer
 4 Decl., ¶ 12. GoDaddy is believed to have actual information concerning the owner of this domain
 5 name, who may be appropriate to name in an amended complaint.

6 4. **Cloudflare, Inc.** is a company that offers security and content-delivery services to
 7 websites, doing so in a manner that allows websites to obscure the identity and location of their
 8 own servers. Multiple websites hosting and/or supporting the Pirate Shops used the Cloudflare
 9 content distribution network to hide the actual IP addresses of their webhosting servers. Mayer
 10 Decl., ¶ 13. Cloudflare is believed to have actual information concerning those servers and the
 11 individuals using its services. Cloudflare is also expected to have information concerning the
 12 volume of traffic to the Pirate Shops’ websites and servers.

13 5. **GitHub, Inc.** is a website offering tools and hosting for software development and
 14 collaboration. Mayer Decl., ¶ 14. As reflected in the Complaint, Plaintiffs identified a GitHub
 15 account believed to be associated with Defendant and are aware of other accounts believed to be
 16 associated with Defendant and others collaborating with him, including accounts maintained for
 17 the purpose of developing and distributing circumvention software. *Id.*; *see also* Dkt. No. 1 at ¶¶ 7,
 18 43-44. Accordingly, it is expected that GitHub will have account information reflecting the extent
 19 of Defendant’s activities, which may also identify other individuals appropriate to name in an
 20 amended complaint. GitHub is also likely to have information reflecting the number of times anti-
 21 circumvention software was distributed from the accounts at issue, which is relevant to Nintendo’s
 22 potential statutory damages award. *See* 17 U.S.C. § 1203(c)(3) (plaintiff may recover statutory
 23 damages of “not less than \$200 or more than \$2,500 per act of circumvention, device, product,
 24 component, offer, or performance of services, as the court considers just.”).

25 6. **Discord, Inc.** operates a popular Internet “chat” platform allowing users to set up and
 26 participate in individual communities, each of which may host thousands of users. Nintendo is
 27 aware of multiple such communities, or “servers,” associated with the Pirate Shops. Mayer Decl.,

1 ¶ 15. Discord will have actual information concerning the users of these communities and those
 2 who established or controlled each community.

3 7. **Google LLC** operates popular Internet platforms such as Gmail and Google Drive, a
 4 cloud storage service. Certain Pirate Shops employed Google Drive to store and distribute
 5 infringing copies of Nintendo games. Mayer Decl., ¶ 16. Defendant used a Gmail address, and
 6 other Gmail addresses related to the Pirate Shops appear to have been used either by Defendant or
 7 others working in concert with him. Google is expected to have information concerning the users
 8 of Google Drive in connection with the Pirate Shops, including those who initially established
 9 and/or maintained repositories of infringing content. Google is also expected to have information
 10 pertaining to the volume of traffic to cloud storage locations used to host and distribute copies of
 11 Nintendo's copyrighted game files.

12 8. **Reddit, Inc.** Reddit is a social media platform where users, often using pseudonyms,
 13 may post to different forums known as communities or "subreddits." Mayer Decl., ¶ 17. As
 14 alleged in the Complaint, under the name "Archbox," Defendant was a primary moderator of the
 15 SwitchPirates community, which boasted more than 190,000 members. *Id.*; *see* Dkt. No. 1, ¶ 4.
 16 Nintendo has reason to believe that other accounts active in the SwitchPirates community may
 17 also have been controlled by Defendant, or else reflect other individuals who have worked
 18 alongside Defendant. *Id.* Reddit is therefore likely to be in possession of information that will aid
 19 in preparation of Nintendo's anticipated motion for a default judgment against Defendant, and that
 20 will assist in identifying any other individuals appropriate to name in an amended complaint.
 21 Reddit is also expected to have information pertaining to the growth of, and traffic to, the
 22 SwitchPirates subreddit during the relevant period of Defendant's activities.

23 **II. NINTENDO SHOULD BE GRANTED LEAVE TO TAKE LIMITED DISCOVERY**

24 District courts have broad discretion in scheduling discovery, including broad discretion to
 25 order expedited discovery prior to a Rule 26 conference. *Hallet v. Morgan*, 296 F.3d 732, 751 (9th
 26 Cir. 2002). Federal Rule of Civil Procedure 26(d)(1) authorizes a court to permit discovery before
 27

1 the Rule 26(f) conference upon a showing of “good cause” for the party’s need for expedited
 2 discovery.

3 Good cause for expedited discovery “exists ‘where the need for expedited discovery, in
 4 consideration of the administration of justice, outweighs the prejudice to the responding party,’”
 5 *Amazon.com, Inc. v. Individuals & Entities Doing Bus. as Certain Amazon Selling Accts.*, 2023
 6 WL 3902695, at *1 (W.D. Wash. May 19, 2023) (quoting *Microsoft Corp. v. Mai*, No. C09-
 7 0474RAJ, 2009 WL 1393750, at *5 (W.D. Wash. May 15, 2009)). Accordingly, “[c]ourts
 8 routinely allow early discovery where it will ‘substantially contribute to moving th[e] case
 9 forward’ and is ‘narrowly tailored’ for that purpose.” *Id.* (quoting *Semitool, Inc. v. Tokyo Electron
 10 America, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. April 19, 2002)). “Relevant factors in assessing
 11 good cause are the requesting party’s diligence, its intent in seeking the requested information, and
 12 whether the opposing party will be prejudiced if the Court grants the motion.” *Id.* (citing *Renaud
 13 v. Gillick*, No. C06-1304RSL, 2007 WL 98465, at *3 (W.D. Wash. Jan. 8, 2007)).

14 Here, good cause exists as to the requested discovery both (1) to inform the scope of the
 15 default judgment to be requested against Defendant, including damages and the scope of a
 16 permanent injunction, and (2) to identify any currently unnamed participants in Defendant’s
 17 scheme. As such the court should grant Nintendo’s application.

18 **A. The Discovery Sought Will Be Narrowly Tailored and Will Substantially
 19 Contribute to Moving the Case Forward**

20 The narrowness of the requested discovery militates in favor of granting the proposed
 21 discovery. Nintendo’s intended requests are narrowly tailored and no broader than necessary to
 22 ascertain the scope and extent of Defendant’s scheme, the necessary contours of a default
 23 judgment and permanent injunction, and any other individuals involved to be properly named in
 24 this action. Because the discovery sought will seek identifying information that Internet service
 25 providers required or collected to use their services, it is likely to reveal the identities of the
 26 individuals or entities primarily responsible for the Pirate Shops, including Defendant and others

1 acting in concert with him whose identities could have been elicited in this litigation if not for
 2 Defendant's default.

3 This requested discovery will substantially contribute to moving the case forward. This
 4 discovery is essential because Defendant and those who have worked in concert with him operated
 5 in secret, under aliases, in connection with multiple Pirate Shops and associated groups. Mayer
 6 Decl., ¶¶ 4-6, 8-17. Moreover, Defendant has defaulted, rendering Nintendo unable to take
 7 discovery without leave of court. Without discovery, Nintendo lacks a complete picture of the full
 8 range of Defendant's infringing activities and related offenses – relevant to damages and the
 9 proper scope of a permanent injunction – as well as knowledge of associated individuals who may
 10 be appropriate to name in an amended complaint. *See Kraho GmbH v. Overlord Ltd.*, No. CV 19-
 11 04050-AB (KSX), 2019 WL 8064249, at *2 (C.D. Cal. Dec. 20, 2019) (finding good cause where
 12 "Defendant has failed to respond to Plaintiff's complaint, so Plaintiff has been prevented from
 13 participating in a Rule 26(f) conference and from obtaining discovery from Defendant as to the
 14 scope of its unlawful activities and the revenue generated from those activities") (collecting cases).
 15 Finally, there can be no doubt that Nintendo's claims have merit: as detailed in the Complaint –
 16 and as Defendant has not bothered to contest – Defendant's scheme involves the large-scale piracy
 17 of hundreds, if not thousands, of copyrighted Nintendo game files. *See, e.g.*, Dkt. No. 1, ¶¶ 5, 40,
 18 104.

19 **B. Nintendo Has Been Diligent in Seeking the Information Sought**

20 Nintendo has been diligent in trying to discover the information it seeks and is acting in
 21 good faith in making this application. To prepare the Complaint and bring this action, Nintendo
 22 and its counsel expended significant time and resources to investigate Defendant's identity and
 23 online activities, as well as those of other anonymous individuals who worked in concert with
 24 Defendant. Mayer Decl., ¶¶ 3-8; *see also* Dkt. Nos. 15-17. Nintendo has exhausted its ability to
 25 discover further information on its own, and Defendant's failure to appear impedes Nintendo's
 26 ability to propound routine discovery either to him or to third parties on matters relevant to the
 27 scope of a requested default judgment and to determine whether other defendants are appropriately

1 named in this action. “Good cause exists where a plaintiff has exhausted its means to identify the
 2 defendant through publicly-available information and has no other way to identify the bad actors
 3 involved in the scheme.” *Amazon.com, Inc. v. Yong*, No. 21-170RSM, 2021 WL 1237863, at *2
 4 (W.D. Wash. Apr. 2, 2021) (citing *Facebook, Inc. v. Various, Inc.*, 2011 WL 2437433, at *3 (N.D.
 5 Cal. 2011)).

6 **C. Nintendo’s Intent Is Proper**

7 Nintendo’s intent in seeking the requested discovery is to obtain highly relevant
 8 information from third parties in light of Defendant’s default, both to ensure appropriate relief
 9 through a default judgment and to allow naming of any additional parties. *See Mayer Decl.*, ¶¶ 8-
 10 9, 18. These are valid purposes for seeking expedited discovery.

11 Courts in this District and elsewhere have granted similar discovery into the scope of a
 12 defaulting defendant’s offenses to accord proper relief. *See Kraho GmbH*, 2019 WL 8064249, at
 13 *2 (collecting cases); *Adobe Sys. Inc. v. Bunhey*, 2013 WL 12140304, at *2 (C.D. Cal. Oct. 29,
 14 2013) (allowing third-party discovery “sought … in an effort to discover the full extent of
 15 Defendants’ counterfeit dealings to support a Motion for Entry of Default Judgment and a request
 16 for damages”); *Microsoft Corp. v. Baro*, No. C07-1953RAJ, 2008 WL 11350072, at *1 (W.D.
 17 Wash. Oct. 20, 2008) (granting motion for default judgment after plaintiff was allowed third-party
 18 discovery); *see also id.*, Dkt. 14 (May 21, 2008) (seeking “limited discovery … for the purpose
 19 determining the scope of Defendant’s infringing activities and proof of sales,” noting the “the size
 20 of defendant’s operation” as one of several factors to be considered upon election of statutory
 21 damages) (citing *Reebok Intern. Ltd v. Jemmett*, 1990 WL 261362, at *4 (S.D. Cal. 1990)).

22 Courts also routinely allow early discovery to identify unknown co-conspirators. “[W]here
 23 the identity of alleged defendants [is] not [] known prior to the filing of a complaint[,] the plaintiff
 24 should be given an opportunity through discovery to identify the unknown defendants, unless it is
 25 clear that discovery would not uncover the identities, or that the complaint would be dismissed on
 26 other grounds[.]” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *see also Valentin v.*
 27 *Dinkins*, 121 F.3d 72, 75-76 (2d Cir. 1997); *Munz v. Parr*, 758 F.2d 1254, 1257 (8th Cir. 1985);

1 *Maclin v. Paulson*, 627 F.2d 83, 87 (7th Cir. 1980); *Amazon.com, Inc. v. Wang Weiyuan*, No.
 2 2:23-CV-00931-RSM, 2024 WL 992609 at *2 (W.D. Wash. Feb. 22, 2024) (collecting cases).

3 Here, the Complaint named a single known defendant, while noting that others participated
 4 in his scheme. *See, e.g.*, Dkt. No. 1, ¶ 30 (reprinting message referring to missingdumps.org
 5 “team”), *id.*, ¶ 32 (Defendant understood to be “*one of* jits’ admins”) (emphasis added). Allowing
 6 discovery is especially appropriate where individuals “pseudonymously or anonymously” commit
 7 tortious acts over the Internet. *UMG Recordings, Inc. v. Doe*, 2008 WL 4104214, at *4 (N.D. Cal.
 8 Sept. 3, 2008) (“In Internet infringement cases, courts routinely find good cause exists to issue a
 9 Rule 45 subpoena to discover a Doe defendant’s identity, prior to a Rule 26(f) conference, where a
 10 plaintiff makes a prima facie showing of infringement, and there is no other way to identify the
 11 Doe defendant, and there is a risk an ISP will destroy its logs prior to the conference.”) (citation
 12 omitted); *see also DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) (where suit
 13 was “still in its early stages,” it was appropriate to name a new defendant in an amended complaint
 14 where plaintiff “waited until they had sufficient evidence” and there was “no evidence in the
 15 record which would indicate a wrongful motive”).

16 **D. Defendant Will Not Be Prejudiced By the Discovery Sought**

17 The burden on the third parties to comply with the intended subpoenas is minimal. Indeed,
 18 the discovery sought would have been propounded anyway had Defendant not defaulted and a
 19 Rule 26 conference taken place. Moreover, the proposed subpoenas will place no burden on
 20 Defendant at all, who, by defaulting, is avoiding compliance with any discovery obligations
 21 himself. *See Amazon.com, Inc. v. Yong*, No. 21-170RSM, 2021 WL 1237863, at *3 (W.D. Wash.
 22 Apr. 2, 2021) (noting that “courts recognize [discovery directed at non-parties] as not impos[ing] a
 23 significant burden upon defendants.”) (internal quotations and citation omitted). Any prejudice to
 24 defendant or others is minimal and is outweighed by the need for discovery sought.

25 **III. CONCLUSION**

26 For the reasons above, Nintendo respectfully requests that the Court enter the proposed
 27 order submitted herewith, authorizing it to conduct limited third-party discovery to aid in

1 preparation of Nintendo's anticipated motion for a default judgment and to identify any additional
2 parties who should be named as defendants in this action.

3 DATED: November 22, 2024
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LOWE GRAHAM JONES PLLC

By:/s/ Mark P. Walters

Mark P. Walters
LOWE GRAHAM JONES PLLC
1325 Fourth Avenue, Suite 1130
Seattle, WA 98101
walters@lowegrahamjones.com
Tel: 206-381-3300

Marc E. Mayer (admitted *pro hac vice*)
Mark C. Humphrey (admitted *pro hac vice*)
MITCHELL SILBERBERG & KNUPP LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067
Tel. (310) 312-2000
Email: mem@msk.com
mxh@msk.com

Attorneys for Plaintiff Nintendo of America Inc.

